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GIFTS

The Laws - The servants of the nation are to render their services without any taking of presentsThe disobedient shall, if convicted, die without ceremony. PLATO

Presented by
The Office of Staff Judge Advocate

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BASICS

- The rules on the acceptance of gifts are with a few exceptions, the same for all agencies in the Executive Branch.
- Everyone in DoD must be aware of the restrictions in order to **avoid inadvertent mistakes** that could ruin a career.
- As decision-makers, we all perform official duties that outsiders may want to unfairly influence. **As public servants, we must not allow even the appearance of impropriety.**

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PERSONAL GIFTS

“FOR ME?

JUST BECAUSE I’M A FED?

NO WAY!”



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GIFTS FROM OUTSIDE SOURCES

5 CFR Part 2635, Subpart B

RULE: You MAY NOT:

- **Solicit, accept or coerce the offering**
- **Directly or indirectly**
- **A gift either--**
 - From any **prohibited source** to OSD,
 - or
 - Given based on **your official position**

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Gifts from “Prohibited” Sources

"Prohibited source" means any person who or entity which:

- **Seeks official action** by OSD
- **Does/seek to do business** with OSD
- Has **interests that may be substantially affected** by performance/nonperformance of your official duties, or
- Is an **organization** a majority of whose members are prohibited sources to OSD

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EXAMPLES

1. **Seeks official action from your agency (e.g., the Boy Scouts, the USO, or the Red Cross)**
2. **Does business or seeks to do business with your agency (e.g., a defense contractor)**
3. **Conducts activities regulated by your agency (e.g., if you work for the Corps of Engineers, then any entity that wants to drain wet lands)**
4. **Has interests that may be substantially affected by your performance or nonperformance of official duties (e.g., if you are a procurement officer, then the contractor you deal with; if you are a personnel officer, then outside associations for employees)**

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WHAT IS A GIFT?

Anything of **value**, including:

- Cash
- Tangible items
- Services
- Entertainment, hospitality, gratuity, or favor
- Training, travel, transportation, lodging and meals
- A discount, loan, or forbearance (forgiveness) of a loan, offered as a result of your official position

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Indirect Gifts

Indirect Gifts include items given to:

- A parent, spouse, sibling, child, dependent relative because of that person's **relationship with you**; or
- Any other person, including a charity, based on **your designation, direction or recommendation.**

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Not “Gifts” (Exclusions)

- Modest items of food and refreshment
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies
- Loans from financial institutions
- Opportunities and benefits available to the public or a class of employees
- Rewards and prizes to competitors (open to the public)
- Pensions and other benefits from a former employer
- Anything paid for by the Government or by the employee.
- Gifts accepted under specific statute

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Rewards & Prizes—A Note

To qualify for this exclusion, entry into the contest or random drawing **MUST**:

Be open to the GENERAL public - Entry may NOT be limited:

- To attendees, or those who filled out evaluation sheets; or
- By lack of public access, or lack of effective notice;

AND

NOT be based on actual performance of Federal Duties - Entry may NOT be:

- Automatic as part of conference registration; or
- Based on amount of purchases made for your DoD organization.



Note: Requires more than mere presence [e.g., entry based on presence at hotel]

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Gift Exceptions

Exceptions to the gift acceptance prohibition

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12 GIFT EXCEPTIONS

The following exceptions permitting Federal employees to accept otherwise improper gifts

- **Gifts of \$20 or less [“\$20/\$50 *de minimus*” Rule]**
- **Gifts based on a personal relationship [“Friends & Family” Rule]**
- **Discounts and similar benefits**
- **Awards and honorary degrees**
- **Gifts based on outside business/employment relationships**
- **Widely attended gatherings and other events;**

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12 GIFT EXCEPTIONS

- **Gifts in connection with permissible partisan political activity**
- **Social invitations from persons other than prohibited sources**
- **Meals, refreshments and entertainment in foreign areas**
- **Gifts to the President or Vice President**
- **Gifts authorized by supplemental agency regulation**
- **Gifts accepted under specific statutory authority**

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EXCEPTION: **\$20/\$50 “*De Minimus*” Rule**

- You may accept otherwise improper gifts:
- Worth **\$20** or less **per occasion, per source**;
and
- No more than **\$50/year** from any one prohibited source.

This exception does not include cash/investment instruments.

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Exception: **\$20/\$50 Rule, cont.**

For gifts that exceed \$20 your options are:

Decline the gift

Non-severable Gift--Pay fair market value for entire gift

Severable Gift--Accept a portion worth no more than \$20

Food--If it will spoil, share it with the office

Return the gift promptly at government expense.

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EXCEPTION: **Friends & Family Rule**



You **MAY** accept a gift where circumstances make clear that the gift is motivated by family relationship/personal friendship rather than your official position *[e.g., holiday gift from brother who works for a prohibited source]*.

Factors to consider include:

- The history of the relationship and
- Whether your friend or family member personally paid for the gift (no expensing to employer)

There is no limit to the value of the gift

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EXCEPTION:

Group Discounts and similar benefits

You **MAY** accept:

Reduced **membership fees** offered by organizations to all government/military personnel

Opportunities/Benefits to group members if membership is:

- Unrelated to government employment or
- Related to government employment IF same benefit is offered to a large segment of the public

Benefits offered from other than prohibited source and class is not based on position, rank or rate of pay

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EXCEPTION: **Awards/Degrees**

Awards. You MAY accept a non-cash award worth **\$200 or less** from a source not affected by the performance or non-performance of your official duties, offered for **meritorious public service** and under a ***bona fide* award program**.

Honorary Degrees: In addition to above, you MAY accept from “institutions of higher education.”

Note: May accept meals and entertainment given to you and your family at presentation. Examine timing of award.

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EXCEPTION:

Outside Business or Employment

IF clear that the gift is not offered to gain access to you, or to influence you, you **MAY** accept meals, lodgings, transportation, and other benefits:

- Based on your **spouse's employment** or
- Based on **your outside business**/employment

You also may accept the same where customarily provided by a **prospective employer** in *bona fide* employment discussions.

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EXCEPTION:

Gatherings & Events (Official Capacity)

You MAY accept an **unsolicited** gift of:

Free attendance for the **Day(s)** of your actual **Participation** When **Speaking** or serving as a **panel member** in your **Official capacity**.

Note: *Food, refreshments, entertainment, instruction and materials furnished are considered customary and not gifts to you or to OSD.*

Note: *You cannot accept travel or lodging costs, but OSD may do so if appropriate under 31 U.S.C. 1353.*

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EXCEPTION:

Gatherings & Events (Personal Capacity)

You MAY accept an **unsolicited** gift of:

Free attendance for the:

Entire event if You are attending in your **personal capacity** and the

Agency designee (usually supervisor) has made an advance determination in writing that:

The event is a **widely-attended gathering**; and Your Attendance **furtheres OSD programs and operations.**

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EXCEPTION:

Widely-Attended Gathering

MEANS:

- Numerous Attendees
- Attendees represent a diversity of views and interests

NOTE: Does NOT include travel or accommodation costs.

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Exception:

Gift in connection with permissible partisan political activity



An employee who takes an active part in political management or in political campaigns (consistent with the Hatch Act Reform Amendments of 1993), may accept meals, lodgings, transportation, and other benefits in connection with such participation from a political organization described in 26 U.S.C. § 527(e).

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Gift Exception:

Social invitations from other than prohibited sources

You may accept food, refreshments, and entertainment, not including travel or lodgings, at a **social event** attended by several people where the invitation is from a person or entity that is not a prohibited source, and there is no fee charged to any person attending the event

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Exception: **Gifts of meals and entertainment in foreign areas**

If you are assigned to duty in, or on official travel to, a foreign area, you may accept food, refreshments or entertainment in the course of a breakfast, lunch, dinner, or other meeting or event provided:

1. The market value of the gift does not exceed the *per diem* rate for that area.
2. There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities.
3. Attendance at the meeting or event is part of your official duties, and;
4. The gift is not from a foreign government.

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Exception:

Gift to the President and Vice President

Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

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Gift Exception: Gifts authorized by supplemental agency regulation

You may accept an unsolicited gift of free attendance at such an event for yourself and your spouse when there is a community relations interest for your agency (e.g., a local Special Olympics event, a high school soccer tournament)

You may accept, for yourself or your dependent, an educational scholarship or grant from an entity that does not have interests affected by the performance of your official duties, if your ethics counselor determines that the scholarship or grant is funded to ensure awards are made on a regular basis and recipients are selected under written standards

Gifts at ship launch and similar ceremonies (JER 2-300c)

There are statutes that provide for the acceptance of gifts by individual employees (e.g., training, 5 USC 4111; gifts from foreign governments, 5 USC 7342)

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DoD SUPPLEMENTAL REGULATION



The **DoD Supplemental Ethics Regulation** covers:

Gifts From Outside Sources: Exceptions:

- Events sponsored by States, local governments and civic organizations
- Scholarships and grant

Gifts between DoD employees: Limitations:

- Gifts from a group including a subordinate cannot exceed \$300
- Solicitations for contributions for gifts to superiors cannot exceed \$10

Written Disqualifications: Required for both conflicts of interest and loss of impartiality concerns for all disclosure filers.

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Gifts from Foreign Governments (5 USC 7342)

Whenever possible, DoD employees shall decline gifts from foreign governments.

Unsolicited gifts from **foreign governments**, officials, or entities MAY be accepted either:

PERSONALLY where the gift is of:

“Minimal value” (currently \$350) & tendered/received as souvenir/mark of courtesy ; OR

Any value for: **Travel** completely outside of the U.S. if consistent with U.S. interests; **Medical care**; or Educational **scholarships**; OR

ON BEHALF OF THE U.S. where:

The souvenir/courtesy gift exceeds the “minimum value;” and Refusing the gift would likely cause offense or **embarrassment** or otherwise adversely affect the foreign relations of the United States.

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Travel Benefits

(31 USC 1353)



When an employee is in a travel status, and when there is no conflict of interest, an agency may accept on behalf of the Government:

Travel and other actual expenses

Lodging, meals, and free attendance

Travel expenses for accompanying spouse when approved by the travel approving authority

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Gifts to the Government

(10 USC 2601 and 2608)



**The Secretaries of
Defense, Army, Navy,
and Air Force may
accept, on behalf of
the Government,
Gifts to their agency**



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Limitations on Exceptions

Notwithstanding any exception, you shall not:

- 1) accept a gift in return for being influenced in the performance of an official act.**
- 2) solicit or coerce the offering of a gift.**
- 3) accept from the same or different sources on a basis so frequent that a reasonable person would be led to believe you are using your office for private gain.**
- 4) accept a gift in violation of any statute (such as accepting a supplementation of your federal salary from a nonfederal source for performing your official duties).**
- 5) accept vendor promotional training contrary to applicable regulations.**

Remember: You are never wrong to decline a gift.

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GIFTS BETWEEN EMPLOYEES



5 C.F.R. part 2635, subpart C: Gifts Between Employees

5 U.S.C. § 7351: Gifts to Superiors



E.g., Food shared at the office??

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GIFTS BETWEEN EMPLOYEES

Receiving

You **MAY NOT**, absent an exception:

- Directly or indirectly
- **ACCEPT** a gift
- From **any lesser-paid employee** unless there's:
 - A personal relationship that justifies the gift; AND
 - **No** superior/subordinate relationship.



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General Exceptions:

On an occasional basis

- **De Minimus (“\$10”) Rule:** A non-cash gift worth up to \$10.
- **Food:** Food shared with office.
- **Customary hospitality:** If you go to a gathering at the boss' house, you can actually bring wine with a cork.
- **Leave** under an approved DoD **leave sharing** plan except to an immediate supervisor.

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Special Gift Exceptions:

- **A special, infrequent occasion of personal significance** *[E.g., marriage, death, birth or adoption of a child]*

OR

- **Events terminating superior/subordinate relationship** *[E.g., retirement, transfer, promotion outside supervisory chain]*

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Special Exception: **Solicitations**

GOVERNMENT-WIDE STANDARDS: You MAY solicit from fellow employees for and make:

Voluntary contributions

Of **nominal amounts** for

An **appropriate gift** to an official superior

DoD SUPPLEMENTAL RULES:

Appropriate Gift: \$300 limit if donating group includes a Subordinate

Subordinate cannot be **solicited** to give more than **\$10** (not including food, refreshments & entertainment).

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Gift Acceptance Analysis

- 1) Is it defined as a “gift”?
- 2) Is it from a prohibited source, or offered because of your official position?
- 3) Is there an exception?
- 4) Is there a limitation on using the exception?

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Contact Information

**ARNORTH & Fort Sam
Houston, Administrative/Civil
Law Division, Office of the
Staff Judge Advocate Office.**

**"Relativity applies to
physics, not ethics."**

— Albert Einstein

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